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domicile of the donee at his death.¹ This seems a necessary application of the broad doctrine that a will of movables which is valid by the law of the testator's domicile at his death is valid in other countries.² In England, by a further extension which is established by authority but questioned as to principle, the power may also be exercised by a will conforming to the law of the donor's domicile.³ A will not conforming to the law of the donee's domicile, but admitted to probate by statute,⁴ is held in England incapable of exercising the power unless executed according to English law.⁵

Whether a given will constitutes an exercise of the power is determined in the United States by the law of the domicile of the donor.⁶ This rule rests on the theory that the donee is merely the agency through which the donor designates the beneficiary, who takes under the instrument creating the power and not under that by which the power was exercised.⁷ In an English case, however, the law of the donee's domicile is taken to govern.⁸ The decision in this case is not so strong as the American decisions, for the instrument in question was not a good execution of the power by the law of the donor's domicile, and to the law of the donee's domicile powers of appointment were unknown. The case has been followed in a recent English decision which adopts its conclusion on similar facts, but leaves in confusion the question whether the law of the donee's or that of the donor's domicile governs. *In re Scholefield*, 21 T. L. R. 675.

The view taken by the English court, that the question whether the will constituted an execution of the power is to be determined by the law of the donee's domicile, seems sound. Even if the donee is a mere agent of the donor, he has an option of exercising the power, and his intention in this respect is not subject to the donor's control. The question being whether the power was exercised or not, the intention of the donee would seem the test. His intention, however, may not appear in the will. Indeed, in the common case, the will makes no reference to the power or to the property over which the power is held, but the only language from which an execution of the power may be found is that of a universal legacy. Where the intention does not clearly appear, but has to be found by implication from the language of the will, the law which decides whether it will thus be found should be the law with regard to which the will was written. That law is presumably⁹ the law of the domicile of the donee.¹⁰

DUPLICATES AS PRIMARY EVIDENCE. — Any one of duplicate instruments may be introduced in evidence without accounting for any other.¹ In this

¹ *D'Huart v. Harkness*, 34 Beav. 324; see *Ward v. Stanard*, 82 N. Y. App. Div. 386.

² Dicey, *Conflict of Laws* 684.

³ In the *Goods of Huber*, [1896] P. 209; In the *Goods of Hallyburton*, L. R. 1 P. & D. 90.

⁴ St. 24 and 25 Vict. c. 114, § 1.

⁵ *Hummel v. Hummel*, [1898] 1 Ch. 642; see also *In re Kirwan's Trusts*, 25 Ch. D. 373.

⁶ *Sewall v. Wilmer*, 132 Mass. 131; *Bingham's Appeal*, 64 Pa. St. 345.

⁷ *Cotting v. De Sartiges*, 17 R. I. 668, 671.

⁸ *In re D'Este's Settlement Trusts*, [1903] 1 Ch. 898.

⁹ Cf. *In re Price*, [1900] 1 Ch. 442.

¹⁰ Wharton, *Conflict of Laws*, 3d ed., 1315.

¹ 2 Wigmore, Ev. § 1232.

connection, however, the term duplicate signifies more than a mere copy: ² the instruments must be identical not only verbally but also in legal import. ³ Early examples of duplicate originals were the counterparts of deeds. ⁴ These became originals, not because of any coincidence of writing, but because they were delivered together. Each instrument thereby became operative as a deed, because that was the intention of the parties. ⁵ So, too, if the parties to a bilateral contract draw up the written contract in duplicate, each taking a copy, either party may produce his copy without accounting for the absence of the original, even though his own signature be lacking from the instrument. ⁶ In such cases it is obvious that nothing depends on the manner in which the instruments were written or printed.

In the case of most written or printed matter, however, intention affords no test. A man who writes to accept an offer one day cannot on the next day make a copy of his acceptance which shall be available in evidence as a duplicate original merely by "intending" that the copy shall operate as such. The question will now depend on the nature of the process by which the alleged duplicate has been produced. And here the line seems to be drawn between duplicates in the strict sense and copies. Thus, letterpress reproductions are not admissible, because really not duplicates, but copies of an original. ⁷ Printed "copies," on the other hand, are true duplicates, being all produced from the same types, and so are admissible. ⁸ In accordance with this distinction the Virginia court has recently declared that carbon "copies" of a letter, made by the same impression as the letter, are admissible as duplicate originals. *Chesapeake & Ohio Ry. Co. v. Stock & Sons*, 51 S. E. Rep. 161. This opinion (which, however, was not necessary to the decision in the case) seems correct. A carbon "copy" is as much an original as to printing as the letter itself, since the production of both is practically instantaneous. The present case, therefore, may properly be classed with the printing-press cases. Nor is the objection sound that, as no signature is ordinarily made on the carbon copy, such copy cannot be of the same legal import as the document which is signed. In the class of cases under discussion the contents of the document, not the signature, are in legal issue. A more serious difficulty is the danger that false evidence will be manufactured. If the other party, however, holds the original letter sent to him, the fraud may easily be shown; and if he does not hold it, the copy would be admissible as secondary evidence. At all events, the risk of fraud is probably counterbalanced by practical advantages. It has become important to business men to have some record of their business correspondence which can readily be produced without the inconvenience of accounting for the originals. To treat carbon copies as originals seems, therefore, sound and progressive as well as technically correct.

But is the test that both instruments must be made by the same mechanical process satisfactory? If letterpress copies are uniformly accurate, the distinction between them and carbon copies, made in the regular course of business, seems merely technical. The real test, then, of whether instru-

² *Toms v. Cuming*, 7 M. & G. 88.

³ *Nelson v. Blakey*, 54 Ind. 29.

⁴ *Lewis v. Payn*, 8 Cow. (N. Y.) 71.

⁵ *Leonard v. Young*, 4 All. (N. B.) 111.

⁶ *Cleveland & Toledo R. R. Co. v. Perkins*, 17 Mich. 296.

⁷ *Nodin v. Murray*, 3 Camp. N. P. 228.

⁸ *Rex v. Watson*, 2 Stark. N. P. 116.

ments are duplicates would seem to be whether there is substantial certainty of identity among them. If so, they should be allowed to be introduced as primary evidence.

AGREEMENTS IN RESTRAINT OF TRADE BY COPYRIGHT-HOLDERS AND PATENTEES. — "To promote the progress of science and useful arts," Congress, under powers conferred by the Constitution,¹ has secured to authors and inventors by means of copyrights and patents the exclusive right to produce and "to vend" their writings and discoveries.² This statutory right of monopoly seems naturally to carry with it the right to employ ordinary and reasonable means of enforcing the monopoly. Thus, a copyright-holder or patentee is allowed to make such contracts with the vendee of the protected article as he wishes. Stipulations, for instance, that the vendee shall sell only for a fixed price or under certain conditions have been held valid, and the breach of them enjoined.³ Yet beyond the strict scope of this statutory exemption it seems clear that the holders of copyrights and patents should be bound by the same common law and statutory restrictions upon contracts and combinations in restraint of trade as are the owners of other property. The test is whether or not the acts in question tend toward the establishment of a new monopoly. Obviously, it would seem that a new monopoly is being attempted when the holders of separate copyrights or patents on articles of the same general class combine for the purpose of controlling the market in the general class of commodities, the particular varieties of which are the subjects of the separate copyrights or patents. The Court of Appeals of New York has, nevertheless, intimated an opinion that a combination among publishers of copyrighted books to boycott all jobbers and booksellers who should not maintain the net prices of copyrighted books fixed by the individual members of the combination, is not illegal as being in restraint of trade.⁴ More recently, however, a federal court strongly maintained the contrary view. *Bobbs-Merrill Co. v. Straus*, 139 Fed. Rep. 155. (Circ. Ct., S. D. N. Y.)

The position taken by the federal court seems eminently sound. The copyright and patent laws confer a monopoly as respects the property covered by them; but it seems unreasonable to construe them as conferring on the owners of several distinct copyrights or patents a right to combine to restrain competition and trade.⁵ Such combinations are, from the public standpoint, especially undesirable. In general, it is only the competition between different copyrighted and patented commodities substantially subserving the same general want that has made copyright and patent laws tolerable. The monopoly price of the protected articles is kept down by this sort of imperfect competition; this competition withdrawn, the prices would rise from those at which people would do without that particular commodity to those at which they would do without that class of commodities.

The question as to the illegality of such combinations or agreements must, however, be carefully distinguished from the question as to the effects

¹ U. S. Const. Art. I, § 8, clause 8.

² 26 U. S. Stats. at L. 1106; 16 *ibid.* 201.

³ *Garst v. Harris*, 177 Mass. 72; *Fowle v. Park*, 131 U. S. 88.

⁴ *Straus et al. v. Am. Pub. Assn.*, 177 N. Y. 473. Cf. *Park & Sons Co. v. Nat., etc., Assn.*, 175 N. Y. 1.

⁵ *National Harrow Co. v. Hench*, 83 Fed. Rep. 36, 38.